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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA,) CASE NO. CR-14-00071 JST
Plaintiff,)
v.) UNITED STATES' SENTENCING
YASUHIRO WATANABE,) MEMORANDUM
Defendant.) Date: July 11, 9:30 a.m.
) Courtroom: 2, 4th Fl.; Hon. Jon S. Tigar
)
)

I. INTRODUCTION

The United States respectfully submits this Sentencing Memorandum in connection with the sentencing of defendant Yasuhiro Watanabe (“defendant” or “Watanabe”). The government concurs with the fifty-one month sentence recommended in the Presentence Investigation Report (“PSR”), and submits this memorandum in support of the proposed sentence, and to address certain of the factors set forth in 18 U.S.C. Section 3553(a).

In his Plea Agreement, the defendant pleaded guilty to the sole count of an Information that charged him with conspiracy to commit bank fraud (18 U.S.C. § 1349). The offense arose from the defendant's perpetration of an international fraud scheme in which he and others defrauded Compass Bank and Bank of America of over \$550,000.

1 **II. PROCEDURAL AND FACTUAL BACKGROUND¹**

2 **A. Procedural History, Plea Agreement, and the PSR's Guidelines Calculation**

3 The defendant was originally charged by complaint and first appeared in custody in the Western
 4 District of Washington on October 31, 2013, whereupon he was transferred to this District and made his
 5 first appearance on November 25, 2013. PSR ¶¶ 1, 4. On February 11, 2014, the government filed a
 6 single-count Information charging Watanabe with conspiracy to commit bank fraud. *Id.* ¶ 1. The
 7 defendant entered his guilty plea on March 21, 2014. *Id.* ¶ 2.

8 The parties submitted the Plea Agreement to the Court pursuant to Federal Rule of Criminal
 9 Procedure 11(c)(1)(C). The parties agreed that, under the advisory Sentencing Guidelines, the total
 10 offense level is calculated as follows: the base offense level is seven (§ 2B1.1(a)(1)); the loss is more
 11 than \$400,000 but not more than \$1,000,000 (a fourteen-level increase; § 2B1.1(b)(1)(H)); a two-level
 12 increase applies for use of sophisticated means (§ 2B1.1(b)(10)); a four-level increase applies because
 13 the defendant was the organizer and leader of the conspiracy (§ 3B1.1(a)); that the defendant would be
 14 entitled to a three-level reduction for acceptance of responsibility (assuming that he met the
 15 requirements of Sentencing Guidelines Section 3E1.1); and that the resulting offense level was 24. *Id.* ¶
 16 3; Plea Agreement, ¶ 7. The parties further agreed that an appropriate sentence was a term of
 17 imprisonment of not more than 51 months, but not less than 37 months, a requirement to pay no less
 18 than \$556,000.00 in restitution, and three years' supervised release. Plea Agreement ¶¶ 8, 10.

19 The Probation Officer's Guidelines calculation is consistent with the calculation above. PSR ¶¶
 20 24 – 35. Applying level 24 to Watanabe's criminal history category I, the Probation Officer calculated a
 21 Guidelines range of 51 to 63 months, and recommended a sentence of 51 months, five years' supervised
 22 release with certain conditions (unless Watanabe is deported, in which case other conditions apply if he
 23 re-enters the United States), and restitution of \$556,744.40. PSR ¶¶ 36 – 40; Sent. Rec., pp. 1 – 2.

24 **B. Offense Conduct**

25 Beginning in 2009 and continuing through early September 2013, Watanabe engaged in a
 26 scheme to defraud Compass Bank and Bank of America, which were federally chartered or insured
 27

28 ¹ Unless otherwise noted, the facts derive from the PSR and the Plea Agreement.

1 banks. The defendant was the leader of this scheme, which involved more than five participants, and
 2 victimized bank branches located in the Northern District of California (including Concord, California),
 3 Nevada, and Arizona, among other places.

4 Watanabe and his coconspirators executed the scheme as follows: Approximately once per
 5 month, the defendant recruited individuals in Japan to travel with him to the United States for the
 6 purpose of opening bank accounts in their names at Compass Bank and Bank of America. Once the
 7 accounts were opened, he funded the accounts by causing a wire transfer to be made, usually for \$1,000
 8 - \$2,000, from bank accounts in Japan, to the newly-opened accounts in the names of his coconspirators.
 9 Watanabe typically paid his coconspirators' travel costs, and also paid them a fee of approximately
 10 \$1,000 for their role in the scheme. The defendant directed his coconspirators to obtain debit cards for
 11 the accounts, and to cause one of the cards to be sent to him. He then returned to Japan and, using the
 12 debit cards, purchased goods (mostly jewelry and train tickets) valued in amounts in excess of the funds
 13 on deposit. Watanabe sold these goods for cash.

14 The defendant knew, when he made these purchases, that there were insufficient funds in the
 15 accounts to pay for the goods that he had purchased, and that Compass Bank and Bank of America
 16 would suffer financial loss as a result of his conduct. Watanabe's scheme caused losses to Compass
 17 Bank of approximately \$106,000, and to Bank of America of approximately \$450,000.

18 **III. LEGAL DISCUSSION**

19 The parties and Probation Officer agree that the total offense level is 24, which translates into a
 20 Guidelines range of 51 to 63 months. The Plea Agreement, assuming that the Court accepts it, stipulates
 21 to a range of 37 to 51 months. Thus, the only remaining issue is the number of months' imprisonment,
 22 within the parties' agreed-upon range, the Court should impose as part of the defendant's sentence. In
 23 support of the government's recommended sentence of 51 months, the government sets forth below a
 24 brief analysis of the relevant sentencing factors recited in Title 18, United States Code, Section 3553(a).

25 **A. § 3553(a)(1): The nature and circumstances of the offense and history and characteristics of**
the defendant

26 The nature of the offense is serious, given the significant amount of money that the defendant
 27 stole, the degree of planning involved, the duration of the scheme, and the number of participants whom
 28

1 the defendant recruited to assist him. Moreover, the defendant's motive appears to be simple greed;
 2 there is no evidence of any other compelling reason for him to commit the fraud (not that such motive
 3 would excuse the conduct, but it at least might explain why he did it).

4 In partial mitigation, and as relevant to the defendant's history and characteristics, the offense
 5 appears to have been an isolated chapter in the life of someone who otherwise has been law-abiding.
 6 Watanabe has no criminal history, received a college-level education, is the father of young children,
 7 and appears to have held regular employment. PSR ¶¶ 36 – 43, 47, 53 – 57.

8 **B. § 3553(a)(2)(A) – (C): The need for the sentence to reflect the seriousness of the offense,**
 9 **respect for the law, and to provide just punishment, deterrence and protection of the public**

10 The United States believes that the imposition of a 51-month sentence will satisfy the policy
 11 objectives of Section 3553(a)(2)(A) - (C). Under the proposed sentence, the defendant, a first-time
 12 offender, will serve a significant amount of time in prison, thereby protecting the public from further
 13 financial fraud, promoting respect for the law, and deterring others who may contemplate exploiting an
 14 apparent gap in the banks' payment processing system with respect to international transactions. The
 15 51-month sentence would also serve the interests of respect for the law and deterrence because it would
 16 obligate the defendant, upon his release, to devote substantial portions of any income he derives to
 17 repayment of a restitution order.

18 **IV. CONCLUSION**

19 For all of the foregoing reasons, the United States recommends that the Court impose upon the
 20 defendant the following sentence: 51 months' imprisonment, three years' supervised release with the
 21 conditions recommended in the PSR (or, if he is deported, the other conditions that the Probation Officer
 22 recommends), restitution of \$106,456.78 paid to BBVA Compass Bank, and \$450,287.62 paid to Bank
 23 of America, and a \$100 special assessment.

24 DATED: July 3, 2014

Respectfully submitted,

25 MELINDA HAAG
 26 United States Attorney

27 /s Thomas E. Stevens
 28 THOMAS E. STEVENS
 Assistant U.S. Attorney